

Application Serial No. 10/808,954
Amendment dated October 31, 2005
Reply to Office Action dated June 30, 2005

Amendments to the Drawings:

The attached four (4) replacement sheets of formal drawings, which include Figs. 1-10, replace the four (4) original sheets of drawings including Figs. 1-10.

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REMARKS

Claims 1-14 are pending. Claims 1-14 have been rejected. Claims 15 and 16 are added.

Drawings

Responsive to the Examiner's objection to the submitted drawings, new, corrected drawings have been filed as Replacement Sheets 1-4 and are labeled as such pursuant to 37 C.F.R. §1.121(d).

Claim Rejections - 35 U.S.C. §102

The Examiner rejected Claims 1-14 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,289,571 to Lewus ("Lewus '571"). Lewus '571 discloses cooking apparatus 70 having chambers 96 and 97, base member 71, pan 74, and quantity of water 92. Water 92 is heated until steam is formed. The steam escapes from chamber 97 and enters chamber 96 via side wall apertures 78 in the sidewall of pan 74.

Applicant respectfully submits that independent Claim 1 is not anticipated by Lewus '571 because the foregoing reference fails to disclose each and every element called for in independent Claim 1. Specifically, independent Claim 1 calls for, *inter alia*, a cooking chamber, a source of steam in fluid communication with the cooking chamber, a conduit having a tapered passage positioned intermediate the source of steam and the cooking chamber, whereby the quantity of steam traverses the tapered passage to enter the cooking chamber. Lewus '571 does not disclose a cooking chamber, a source of steam in fluid communication with the cooking chamber, a conduit having a tapered passage positioned intermediate the source of steam and the cooking chamber, whereby the quantity of steam traverses the tapered passage to enter the cooking chamber.

The Examiner relied on the sidewall of pan 74 of Lewus '571, in conjunction with the interior wall of the chamber, as forming a "conduit" which forms a tapered passage. Having thoroughly reviewed the specification of Lewus '571, Lewus '571 provides no indication that the "conduit" identified by the Examiner forms a tapered passage. Additionally, the drawings of Lewus '571 cannot be relied on for disclosing that the "conduit" formed by the sidewall of pan 74 forms a tapered passage. Lewus '571 does not indicate that any of the drawings have been drawn to scale. When there is no indication that patent drawings are to scale "it is well established that [the]

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drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956 (Fed. Cir. 2000). Lewus '571 is silent as to the dimensions of the "conduit" as defined by the Examiner. To reach the conclusion that the "conduit" is tapered, the angle of the "conduit" relative to the sidewall of base member 71 must be measured. However, reliance on such a measurement, as stated above, would be inappropriate and unpersuasive. *Nystrom v. Trex Co.*, No. 03-1092, 2005 WL 2218632, at *12 (Fed. Cir. Sept. 15, 2005) (stating "arguments based on drawings not explicitly made to scale in issued patents are unavailing").

For the foregoing reasons, Applicant respectfully submits that amended independent Claim 1, as well as Claims 2-6, 15, and 16, which depend therefrom, are not anticipated by Lewus '571.

Applicant respectfully submits that independent Claim 7 is not anticipated by Lewus '571 because the foregoing reference fails to disclose each and every element called for in independent Claim 7. Specifically, independent Claim 7 calls for, *inter alia*, a cooking chamber, a source of steam providing a quantity of steam, and an acceleration means for accelerating the quantity of steam. Having thoroughly reviewed the specification of Lewus '571, Lewus '571 does not disclose an acceleration means for accelerating the quantity of steam. Nothing disclosed in Lewus '571 performs the function of accelerating steam. To rely on the sidewall as functioning to accelerate the steam would require reliance on the scale and measurements of the drawings, which, as discussed above, is inappropriate.

For the foregoing reasons, Applicant respectfully submits that independent Claim 7, as well as Claims 8-12 which depend therefrom, are not anticipated by Lewus '571.

Applicant respectfully submits that independent Claim 13 is not anticipated by Lewus '571 because the foregoing reference fails to disclose each and every element called for in amended independent Claim 13. Specifically, independent Claim 13 calls for, *inter alia*, providing a quantity of steam, transferring the quantity of steam to the cooking chamber, and accelerating the quantity of steam during the transferring step. As discussed in reference to Claim 7, nothing in Lewus '571 discloses accelerating a quantity of steam during the step of transferring the quantity of steam to the cooking chamber. Further, as discussed above regarding Claims 1 and 7, the drawings cannot

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properly be relied on for the disclosure of accelerating a quantity of steam during the step of transferring the quantity of steam to the cooking chamber.

For the foregoing reasons, Applicant respectfully submits that independent Claim 13, as well as Claim 14 which depends therefrom, are not anticipated by Lewus '571.

New Claims

Applicant herewith submits new Claims 14 and 15. New Claims 14 and 15 depend from Claim 1 and are patentable over the prior art for at least the reasons advanced above with respect to Claim 1.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicant respectfully submit that the application is in condition for allowance and respectfully requests allowance thereof.

In the event Applicant have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicant hereby petition therefore and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

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Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at (260) 424-8000.

Respectfully submitted,



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CERTIFICATION OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: October 31, 2005

MATTHEW B. SKAGGS, REG. NO. 55,814
Name of Registered Representative



Signature

October 31, 2005

Date